

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

OTOE COUNTY SCHOOL DISTRICT,

Plaintiff/
Counterclaim Defendant,

VS.

INVENSYS BUILDING SYSTEMS, INC.,

Defendant/
Counterclaim Plaintiff.

CASE NO. 8:05CV276

ORDER

In connection with the pending motion for partial summary judgment, the court raises the issue of the court's subject matter jurisdiction. In its complaint, Plaintiff Otoe County School District (School District) alleges "the arbitration requirements of Article 15 of the subject agreement are not binding upon the parties, as the contract does not meet the requirement of Neb. Rev. Stat. § 25-2602.02 of the Uniform Arbitration Act." (Compl. ¶ 4). Defendant Invensys Building Systems, Inc. (Invensys) answered the complaint raising several affirmative defenses, including "[t]his Court is without jurisdiction to hear this matter as § 15.1 of the contract at issue between the parties mandates that any dispute, controversy or claim arising out of or in connection with or relating to the contract at issue is to be submitted to and settled by arbitration." (Def.'s Answer ¶ 20). The allegation and defense are repeated in the amended complaint and amended answer.

Neither party has further addressed the issue, however, the court must sua sponte raise and resolve issues regarding subject matter jurisdiction before proceeding. Bilello v. Kum & Go, L.L.C., 374 F.3d 656, 659 (8th Cir. 2004). Accordingly, the court requires further briefing by the parties on the issue of the court's subject matter jurisdiction in light of the arbitration provision set forth in Article 15 of the contract at issue in this case.

IT IS ORDERED:

1. The parties must submit to the court, no later than June 30, 2006, simultaneous supplemental briefing of no more than ten (10) pages, and any related evidence, on the issue of the court's subject matter jurisdiction as it applies to Article 15 of the subject contract.

Dated this 20th day of June, 2006.

BY THE COURT:

s/ William Jay Riley
United States Circuit Judge
(Sitting by Designation)